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Nathu Ram Agarwal Vs State of Bihar

Criminal Miscellaneous No. 5019 of 1999 (R)

Court: Jharkhand High Court

Date of Decision: March 20, 2001

Acts Referred:
Bihar Essential Articles (Display of Prices and Stocks) Order, 1977 â€" Section 6#Criminal Procedure Code, 1973 (CrPC) â€" Section 482#Essential Commodities Act, 1955 â€" Section 12A, 12AA, 7

Citation: (2001) 49 BLJR 1757 :(2001) 4 Crimes 144

Hon'ble Judges: D.N. Prasad, J

Bench: Single Bench

Advocate: J.K. Parsari, for the Appellant; Ashok Kumar Sinha, APP, for the Respondent

Final Decision: Allowed

Judgement

Deoki Nandan Prasad, J.
This application has been filed u/s 482 of the Code of Criminal Procedure by the sole petitioner for quashing the

entire criminal proceeding including the order dated 3.4.1999 in connection with Ken-duadih PS Case No. 104 of 1998 corresponding to GR

Case No. 2469 of 1998 in which cognizance was taken by the Special Judge (EC Act), Dhanbad, u/s 7 of the Essential Commodities Act.

2. The brief case of the prosecution as stated that the informant party raided the shop premises of the petitioner on 15.7.1998. The stock of the

articles was verified and no document was produced at the relevant time accordingly, seizure list was prepared. It is alleged that the Rice, Wheat,

Sugar Dal and Mustard Oil are said to have been recovered from the shop premises of the petitioner. Accordingly, the First Information Report

was lodged.

3. The learned counsel appearing on behalf of the petitioner submitted at the very outset that the petitioner has got no concern with the goods

seized from the godown situated in the house of one Subhash Gupta. It is further submitted that the petitioner is a retail trade licensee of the food

grains having License No. 2/KND/89, hence no licence is required for the articles said to have been seized from the said premises as the storage

limit has not been fixed in respect of Wheat, Mustard oil, Dal Atta etc., and the whole prosecution case is false. Counsel for the petitioner also

submitted that ac- cording to the storage limit of the trade articles as indicated in GSR 49 dated 17th October, 1985, the retail dealer in Sugar

could have possessed the quantity of Sugar upto 50 Quintals and the Sugar said to have been recovered from the premises of the petitioner was

below 50 quintals and, as such, no violation was made. As regards two other articles said to have been recovered do not require licence as

admittedly there is no storage limit prescribed by the Government which is mandatory.

4. It is also submitted that cognizance was taken by the Special Judge (EC Act), Dhanbad by order dated 3.4.1999 which is also bad in law as the

Special Judge has got no jurisdiction to entertain the case u/s 7 of the Essential Commodities act after lapse of Act 18 of 1981 which has already

been expired in the year 1998. There is no sanction as required for initiation of a case for violation of the Order under the Bihar Essential Articles

(Display of Prices and Stock) Order, 1977, Hence the entire criminal proceeding is fit to be quashed.

5. On the other hand, the learned Additional Public Prosecutor fairly conceded in course of argument that Act 18 of 1981 has already expired.

However, Essential Commodities Act, 1955, is now in existence. It is true that no sanction has been obtained in this case as required under

proviso to Section 6 of the Bihar Essential Articles (Display of Prices and Stocks) Order, 1977, which reads as under:--

No prosecution shall lie against a person for contravention of any of the provisions of this Order unless the same has been sanctioned by the

District Magistrate or Special Officer Incharge, Rationing or Additional District Magistrate (Supply) or Sub-Divisional Magistrate within limits of

their respective local jurisdiction.

6. It may be noted here that the Central Government issued notification being S.O. 772(E) dated 10th November, 1977 deleting edible oil and

edible seeds from the Central Order. The Central Government also directed all the State Governments through its letter dated 23rd December,

1977 to ensure compliance in confirmity with the amendment made by the Central Government by virtue of the said notification. It has clearly been

held in the case of Satya Narain Prasad v. The State of Bihar 1988 PLJR 502, that no licence fee mentioned for licence for dealing in pulses and,

as such, the confiscation and the prosecution for want of licence in such a situation is invalid. There appears also that no storage limit has been

prescribed for wheat and rice which stood removed by the Government of India and as such the petitioner cannot be said to have violated the

provisions of Clause 3 of the said Order under the Essential Commodities Act.

7. It is now the admitted position that Act 18 of 1981 by which certain specific provisions by way of amendment under the Essential Commodities

Act, 1955 was inserted and that Act has already expired. The Special Courts (Special Judges) were constituted for the offence triable by the

Judge as laid down under Sections 12A and 12AA of the said Act and the said Act has already expired on 18th July, 1998. Thus it can safely be

held that the cognizance taken by the Special Judge after expiry of Act 18 of 1981 cannot be said to be good.

8. Having regard to the above facts and circumstances of the case coupled with the reasons mentioned hereinabove, I am of the view that this

application is fit to be allowed.

9. In the result, this application is allowed and the entire criminal proceeding in connection with Kenduadih PS Case No. 104 of 1998

corresponding to GR Case No. 2469 of 1998 including the order of cognizance dated 3.4.1999 passed by the Special Judge (EC Act), Dhanbad,

is hereby quashed.

10. Application allowed.